

To this it was ANSWERED,—That Harie having right to the sum by virtue of the clause of substitution in the bond, he behoved of all necessity to have right to all that had followed thereupon, since the bond, and the diligence done thereon keep the same channel, and cannot in law be divided, *ubi accessorium sequitur suum principale*; and Harie needed no other thing to give him right to the apprising, but the clause of substitution conceived in his favours: and the leading the apprising after the bond, and the Earl's taking the infestment to himself and his heirs whatsoever, must be repute, no change of the substitution, nor exercise of that power reserved him by the bond, but must be ruled by it as relative thereto; and to propone upon the Earl's right as heir, is not competent unless he were compearing.

It was REPLIED,—That Harie and those who have succeeded in his right, should have raised a declarator of their right to the apprising, as consequential to the bond, ere they could use any order of redemption by virtue thereof.

They were to have the Lords answer upon both these points. See a case not much unlike, *26th July, 1610, Douglas of Cavers contra Elliot.*

*Act. Lockhart. Alt. Wallace. Advocates' MS. No. 110, folio 86.*

1671. *January 27.*

MACKEINZIE *against* MACKEINZIE.

THIS is a reduction of a decret of the commission for plantation of kirks, at a minister's instance, against his parishioners. My Lord Advocate refused to find the Lords Judges competent to the reduction of the plats decreets, because it is a committee of Parliament, and at least co-ordinate to the Lords themselves. But it being called before my Lord Gosford, he SUSTAINED it, seeing the Lords are not obliged to decline themselves. (*Vide infra, June 1677, Number 586, Minister of Nig's case.*) And this were very acceptable to the lieges, if it were drawn in a custom, because they get far more speedy justice before the Lords of Session, than they do before that commission. See something not unlike sustained in the English time, *11th June 1656, Earl of Roxburgh.* Yet see *6th February 1658, Mr. Robert Hodge*; but at this time there was no such court as a commission.

*Act. Rory Mackenzie. Alt. Sir G. Mackenzie.*

*Advocates' MS. No. 111, folio 87.*

1671. *January 27.*

GEORGE GORDON *against* REIDS.

THIS was a reduction, at the instance of Mr. George Gordon, son to George Gordon, messenger, against thir Reids, of a disposition made by his father to them on death-bed. Against which it was ALLEGED,—That he had no interest to pursue this action, because he wanted an active title; *viz.* he was not served and retoured heir. ANSWERED,—He had a service, and that was enough. REPLIED, It was never heard of, that a service (which is only a passive title without a re-

tour) could found a pursuit. DUPLIED,—He insisted as apparent heir, and cited my Lord Balmerino's case against Airlie, wherein they found not only that an apparand heir might reduce a deed done to his prejudice *ex capite lecti*, but even a personal creditor.

My Lord Gosford demurred on this : for *Durie 11th February 1635, Muire*, seems to be contrary.

*Act. Cunyghame.*

*Alt. Yeoman.*

*Advocates' MS. No. 112, folio 87.*

1671. *January 27.*

GORDON of CLUNY *against* \_\_\_\_\_

THIS was a charge upon a contract ; against which it was ALLEGED,—That the charge was null, because the contract was summarily registrate after the death of one of the parties contractors, whereas it should have been registrate by way of action ; for the registration of a writ is a formal decret ; now a decret can never be obtained at a dead man's instance, nor yet against one that's dead. *2do*, The clause of registration giving warrant to such a person to compear and give his assent to the registration thereof, is of the nature of a mandate ; but *mandatum expirat tam morte mandatoris quam mandatarii*.

And this the Lords found in the Inner-house, in the case of *Kylle and Seaton* ; See a case not unlike, *13th July 1610, Gordon and Mackie*.

*Act. Nicolsonsone.*

*Alt. Seaton.*

*Advocates' MS. No. 113, folio 87.*

1671. *January 27.* BISHOP of CAITHNESS *against* ANGUS MACKY of Bighouse.

THIS is a suspension upon this reason, that whatsoever bonds are granted *ob causam datam causa non secuta*, the same are null by way of exception ; but *ita est* this bond charged on is such in so far as he granted it in contemplation of a tack of teinds which the Bishop was to set him, and which is never yet done ; and that this was the cause of the bonds, refers it to the charger's oath.

THIS WAS FOUND RELEVANT.

*Act. Thoires. Alt. \_\_\_\_\_.*

*Advocates' MS. No. 114, folio 87.*

1671. *January 27.*

Anent VALIDITY of a TICKET.

THIS was a suspension upon this reason, that the ticket charged on is null, because it wanted the writer's name. It was ANSWERED, that it was all written with the suspender's own hand, and so they condescended on him as the writer of it.